

APR 18 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

KENNETH R. KINNARD, dba P&K
Trucking,

Plaintiff - Appellant,

v.

ROGERS TRUCKING,

Defendant - Appellee.

No. 05-16367

D.C. No. CV-99-04565-MMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Kenneth R. Kinnard appeals pro se from the district court's summary judgment in favor of Rogers Trucks & Equipment, Inc. ("Rogers"), on his claims of racial discrimination in violation of 42 U.S.C. § 1981 and unfair business

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

practices in violation of California Business and Professions Code § 17200. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Gay v. Waiters' & Dairy Lunchmen's Union*, 694 F.2d 531, 546 (9th Cir. 1982), and we affirm.

The district court properly concluded that Kinnard failed to produce any evidence that Rogers' legitimate, non-discriminatory reason why Kinnard was not awarded a trucking contract was a pretext for racial discrimination. *See DeHorney v. Bank of Am. Nat'l Trust and Sav. Ass'n*, 879 F.2d 459, 467 (9th Cir. 1989).

The district court also properly rejected Kinnard's arguments surrounding his counsel's alleged acts of fraud and conspiracy because Kinnard failed to submit admissible evidence to support his claims. *See School Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The district court did not abuse its discretion when it denied Kinnard's request for a continuance of the proceedings for medical reasons because Kinnard did not submit admissible evidence showing why a continuance was necessary. *See Fed. Sav. and Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989).

Kinnard's remaining contentions lack merit.

All pending motions for leave to file amicus briefs are denied because the proposed briefs raise the same points already raised in Kinnard's briefs. *See* 9th Cir. R. 29-1, Adv. Comm. Note.

AFFIRMED.